

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25407

EVERGREEN NURSERIES, INC.

Applicants

NORTHERN CALIFORNIA COUNCIL OF FLY  
FISHING CLUBS

Protestant

Decision: 1534

Source : Pilarcitos Creek

County : San Mateo

DECISION APPROVING APPLICATION 25407

BY THE BOARD:

Evergreen Nurseries, Inc. having filed Application 25407 for a permit to appropriate unappropriated water; protests having been received; the applicant and protestants having stipulated to proceedings in lieu of hearing as provided by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulations; the Board, having considered all available information, finds as follows:

Substance of Application

1. Application 25407 seeks to appropriate 14 acre-feet per annum to storage from December 1 to May 1 from Pilarcitos Creek and an unnamed stream tributary to Pilarcitos Creek thence the Pacific Ocean. The point of diversion from Pilarcitos Creek is located within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 28, T5S, R5W, MDB&M. The storage reservoir is located on the unnamed stream within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 28. The rate of diversion to offstream storage is to be one cubic foot per second. The water is to be used for recreational, fire protection, stockwatering, and irrigation.

### Applicant's Project

2. The applicant's project consists of an earth dam which has been constructed on the unnamed stream, 300 feet long and 24 feet high forming a reservoir with a surface area of 1.4 acres and a capacity of 14 acre-feet. In addition to collecting water from the unnamed stream the applicant will divert water from Pilarcitos Creek by means of a 20 horsepower pump and will transport that water through 2000 feet of six-inch PVC pipe with a lift of over 80 feet.

### Protests

3. The Department of Fish and Game and the Northern California Council of Fly Fishing Clubs filed protests against the application on the basis that it would not best conserve the public interest and would have an adverse environmental impact. The Department of Fish and Game withdrew its protest upon agreement with the applicant for inclusion of specific bypass flow requirements for the protection of fish and wildlife.

4. The Northern California Council of Fly Fishing Clubs did not agree with the bypass flows requested by the Department of Fish and Game and accepted by the applicant. The Council requested the Board to consider requiring greater bypass flows and a measuring point at the U. S. Geological Survey gaging station about a mile downstream. However, a large tributary, Arroyo Leon, joins Pilarcitos Creek between the applicant's pump and the station. Thus, flow at the station would not approximate flow at the pump. Furthermore, the Council has not submitted substantiating evidence for the greater bypass flows.

### Availability of Unappropriated Water

5. The United States Geological Survey has maintained the gaging station on Pilarcitos Creek since July 1966 and 11 years of record are presently available. Analysis of these records indicates that there is sufficient flow in Pilarcitos Creek to supply the applicant's needs and maintain the flows prescribed by Fish and Game for all years of record except the drought years of

1976 and 1977. The 1976-1977 drought was the severest in California's recorded history and cannot be used as the basis for a finding that unappropriated water is not available. In water year 1972 when the runoff was only 15% of the 11-year average the source would have supplied sufficient water to satisfy the applicants' needs and the bypass amounts for fish.

#### Environmental Considerations

6. This Board decision authorizes the following activity: collection and storage of water in an existing reservoir for irrigation, recreational, fire protection, and stockwatering purposes. Such activity constitutes only a minor modification to land, and such activity is thereby exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) in accordance with Section 15104, Chapter 3, Title 14, California Administrative Code.

#### Record in this Matter

7. The records, documents, and other data relied upon in determining the matter are: Application 25407 and all relevant information on file therewith including the Engineering Staff Analysis dated May 22, 1979 and Notice of Exemption.

#### Conclusions

8. From the foregoing findings, the Board concludes that Application 25407 should be approved and a permit issued to the applicant subject to the conditions in the order following.

ORDER

IT IS HEREBY ORDERED that Application 25407 be approved and that a permit be issued to the applicant subject to vested rights. The permit shall contain all applicable standard permit terms (5i, 6, 10, 11, 12, and 13)\* in addition to the following limitations:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 14 acre-feet per annum to be collected from December 1 of each year to May 1 of the succeeding year.

The maximum rate of diversion to offstream storage shall not exceed one cubic foot per second.

2. Complete application of the water to the proposed use shall be made on or before December 1, 1983.

3. For the protection of fish and wildlife, permittee shall:

a. At all times bypass a minimum of five cubic feet per second.

The total streamflow shall be bypassed whenever it is less than the designated amount.

b. Not divert when Pilarcitos Creek at the point of diversion is flowing between 10 and 17 cubic feet per second, inclusive.

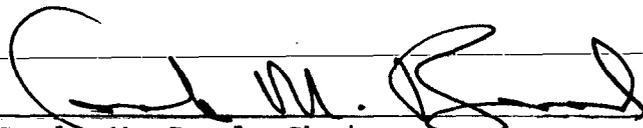
4. In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of such diversion. The construction, operation, or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.

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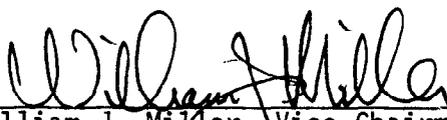
\* The Board maintains a list of standard permit terms. Copies of these are available upon request.

5. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flow required by the conditions of this permit. Said measuring device shall be properly maintained.

Dated: SEP 20 1979



Carla M. Bard, Chairwoman



William J. Miller, Vice Chairman

**ABSENT**

L. L. Mitchell, Member



W. Don Maughan, Member

